

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)
)
WARREN HAVENS, ENVIRONMENTEL LLC,)
INTELLIGENT TRANSPORTATION &)
MONITORING LLC, SKYBRIDGE SPECTRUM)
FOUNDATION)
)
Petitions for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: April 16, 2010

Released: April 19, 2010

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order on Reconsideration* denies two petitions for reconsideration of a declaratory ruling interpreting two rules governing Automated Maritime Telecommunications System (AMTS) operations. We have before us two petitions for reconsideration, one filed by Maritime Communications/Land Mobile, LLC (MC/LM),¹ and one filed jointly by Warren Havens, Environmentel LLC, Intelligent Transportation & Monitoring LLC, and Skybridge Spectrum Foundation (collectively, Havens),² each seeking reconsideration of a *Letter Ruling* by the Mobility Division (Division), Wireless Telecommunications Bureau.³ For reasons discussed below, we deny both petitions for reconsideration.

2. *Background.* Section 80.215 of the Commission's Rules sets forth the AMTS transmitter power limits. Coast stations are limited to fifty watts transmitter output power (TPO),⁴ with an additional limit⁵ of one thousand watts effective radiated power (ERP) for certain coast stations.⁶ Ship stations generally are limited to twenty-five watts TPO and eighteen watts ERP,⁷ but Section 80.215(i) permits a TPO of fifty watts under certain conditions.⁸

¹ Petition for Partial Reconsideration, filed May 8, 2009 (MC/LM Petition).

² Petition for Reconsideration and Comments Erratum Copy, filed May 8, 2009 (Havens Petition). MC/LM filed an opposition. Maritime Communications/Land Mobile, LLC, Opposition to Petition for Reconsideration, filed May 21, 2009 (MC/LM Opposition).

³ Dennis C. Brown, *Letter*, 24 FCC Rcd 4135 (*Letter Ruling*).

⁴ See 47 C.F.R. § 80.215(c)(1), (h)(5).

⁵ See MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971, 8986 ¶ 24 (2007).

⁶ Specifically, stations with an antenna height of 61 meters or less that are more than 169 kilometers from a Channel 13 television (TV) station or more than 129 kilometers from a Channel 10 TV station. See 47 C.F.R. § 80.215(h)(1).

⁷ See 47 C.F.R. § 80.215(e)(2), (i).

⁸ Specifically, increases exceeding twenty-five watts are made only by radio command from the controlling coast station, and the TPO is twenty-five watts or less when external radio commands are not present. See 47 C.F.R. § 80.215(i)(1), (2).

3. Section 80.385(b)(1) of the Commission's Rules sets forth the co-channel interference protection that AMTS geographic area licensees must afford site-based incumbents. Generally, a geographic licensee must locate its stations at least 120 kilometers from co-channel site-based incumbent stations, but shorter separations are permitted if at least 18 dBu protection will be provided to the site-based licensee's predicted 38 dBu signal level contour.⁹

4. In 2008, MC/LM asked the Division to clarify Sections 80.385(b)(1) and 80.215(i). With respect to Section 80.385(b)(1), MC/LM requested that the Division clarify that, for purposes of calculating a site-based station's predicted 38 dBu contour, the site-based station should be assumed to operate with one thousand watts ERP, irrespective of its actual ERP.¹⁰ The Division denied this request, concluding that the Commission intended for an AMTS geographic licensee to provide interference protection to a co-channel site-based licensee on the basis of the latter's actual ERP.¹¹ The Division observed that the AMTS co-channel interference protection standard was based on the standard for the spectrally adjacent 220-222 MHz (220 MHz) service, and that the Commission has stated that the 38 dBu contours of incumbent 220 MHz stations are to be calculated on the basis of their actual, rather than theoretical maximum, operating parameters.¹² The Division further noted that adopting MC/LM's interpretation of Section 80.385(b)(1) would run counter to the goal of promoting efficient spectrum use, because it could foreclose AMTS geographic licensees from providing service even in areas that were not receiving service from an incumbent site-based station.¹³

5. With respect to Section 80.215(i), MC/LM requested that the Division clarify that a ship station operating with a TPO of fifty watts pursuant to Section 80.215(i) is permitted to operate with an ERP of up to thirty-six watts.¹⁴ The Division so clarified the rule, agreeing that "[a]lthough Section 80.215(i) expressly authorizes only an increase in [TPO] under the specified circumstances, and not an increase in ERP, it is evident that the Commission contemplated a corresponding increase in ERP."¹⁵

⁹ See 47 C.F.R. § 80.385(b)(1).

¹⁰ See Letter dated Dec. 18, 2008, from Dennis C. Brown to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, at 2 (MC/LM Request).

¹¹ See *Letter Ruling*, 24 FCC Rcd at 4135-36.

¹² *Id.*, citing Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*; *Fifth Notice of Proposed Rule Making*, PR Docket No. 89-552, GN Docket No. 93-252 & PP Docket No. 93-253, 12 FCC Rcd 10943, 11026 ¶ 174 (1997).

¹³ *Id.* at 4136 & n.6. The Division also observed that assuming that site-based incumbent AMTS stations are operating with one thousand watts ERP would underprotect stations not subject to the ERP limit that are operating with a higher ERP. *Id.* at 4136. The Division further noted that basing AMTS geographic licensees' interference protection obligations on the site-based stations' actual operating parameters was consistent with a recent Division decision in a licensing matter. *Id.*, citing *Northeast Utilities Service Company, Order*, 24 FCC Rcd 3310 (WTB MD 2009) (*NUSCO Order*), *recon. pending*. (MC/LM faults the Division's reliance on the *NUSCO Order*, inasmuch as the question of how to calculate a site-based incumbent's predicted 38 dBu contour was not contested in that case. See MC/LM Petition at 8. The Division did not rely on the *NUSCO Order*; rather, it only noted that the *NUSCO Order* and *Letter Ruling* were consistent in this regard. There is no reason to believe that the Division would have resolved MC/LM's declaratory ruling request any differently in the absence of the *NUSCO Order*.)

¹⁴ See MC/LM Request at 2.

¹⁵ See *Letter Ruling* at 4137, citing Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Memorandum Opinion and Order*, Gen Docket No. 80-1, 88 FCC 2d 678, 685 ¶ 24, 686 ¶ 28 (1981). The Division reasoned that interpreting Section 80.215(i) as limiting ERP to eighteen watts even when the ship station is permitted to operate with fifty watts TPO "would defeat the Commission's purpose in allowing the exceptions to the general twenty-five watt TPO limit." *Id.*

6. *Discussion.* MC/LM seeks reconsideration of the Division's first holding, that AMTS geographic licensees need only provide co-channel interference protection on the basis of incumbent site-based licensees' actual ERP, rather than an assumed ERP of one thousand watts. First, MC/LM contends that the Division's interpretation is based on a misplaced reliance on the 220 MHz rules.¹⁶ The Division did not, itself, rely on the 220 MHz rules. Rather, the Division correctly noted that the Commission, when it adopted Section 80.385(b)(1), expressly stated that the rule was based on the 220 MHz rules.¹⁷ MC/LM further argues that the 220 MHz interference rules are not instructive because the authorized station ERP is set forth on the face of each 220 MHz license, but not on AMTS licenses.¹⁸ MC/LM's observation regarding the absence of authorized ERP from AMTS licenses is correct, but does not require that we abandon the use of actual ERP for determining co-channel interference protection. Indeed, the Division directly addressed this issue, pointing out that AMTS site-based licensees are expected to cooperate with geographic licensees in avoiding and resolving interference issues, and that this obligation requires, at minimum, that the site-based licensee "provid[e] upon request sufficient information to enable geographic licensees to calculate the site-based station's protected contour."¹⁹

7. Finally, MC/LM argues that the Commission's interpretation of Section 80.385(b)(1) is inconsistent with the statutory mandate for equal treatment of licensees in the same service, regardless of whether the licenses were obtained through auction or other means.²⁰ MC/LM contends that the Division's interpretation of Section 80.385(b)(1) effectively permits AMTS geographic licensees, but not AMTS site-based licensees, to operate with an ERP of one thousand watts, notwithstanding that Section 80.215 does not differentiate between geographic and site-based licensees.²¹ We disagree. Section 80.215 imposes the same maximum power limit on geographic and site-based licensees, regardless of the Division's interpretation of how to calculate an incumbent's predicted 38 dBu contour for purposes of co-channel interference protection pursuant to Section 80.385(b)(1). As discussed above, that interpretation is based on the Commission's decision to protect site-based incumbents' existing operations, rather than

¹⁶ See MC/LM Petition at i, 3-8.

¹⁷ See *Letter Ruling*, 24 FCC Rcd at 4135, citing Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6700 ¶ 31 (2002) (*AMTS 5th R&O*) ("AMTS geographic licensees should adhere to the co-channel interference protection standard that is used in the adjacent 220-222 MHz band"), *on recon.*, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003). MC/LM argues that the paragraph cited by the Division, read in its entirety, reflects that the Commission's concern was to protect incumbent licensees from geographic licensees, and not *vice versa*, and therefore "supports MC/LM's position." See MC/LM Petition at 6. That both Section 80.385(b)(1) and the cited paragraph address a concern over interference from geographic licensees to site-based incumbents is evident, and the Division suggested nothing to the contrary. MC/LM infers, from the Commission's statement in the referenced paragraph that incumbent licensees should be permitted to operate under the terms of their current licenses, an intent to protect incumbents on the basis of an ERP of one thousand watts. *Id.* at 7. We conclude, however, that the Commission's concern was to avoid disruption of *existing* AMTS service, rather than to indefinitely preserve an incumbent licensee's ability to expand its facilities to the maximum permitted ERP. See *AMTS 5th R&O*, 17 FCC Rcd at 6699 ¶ 31 ("allowing incumbent licensees to continue operating under the terms of their current station licenses will further the public interest by avoiding interruption of the services they provide"), 6701 ¶ 34 (prohibiting incumbents from modifying their licenses in any manner that extends the service area).

¹⁸ See MC/LM Petition at 6-7. AMTS site-based licenses authorize a maximum power based on TPO. MC/LM asserts that, in contrast to the situation in the 220 MHz service, a geographic AMTS licensee would not be able to ascertain the protected area of a site-based AMTS station if the protected area is based on actual ERP rather than the maximum ERP allowed under Part 80. *Id.* at 7.

¹⁹ See *Letter Ruling*, 24 FCC Rcd at 43136 n.9, citing *NUSCO Order*, 24 FCC Rcd at 331 n.12, citing *AMTS 5th R&O*, 17 FCC Rcd at 6704 ¶ 39.

²⁰ See MC/LM Petition at 8-9, citing 47 U.S.C. § 309(j)(6)(D).

²¹ *Id.* at 9-10.

protecting the maximum possible contour. We accordingly deny the MC/LM petition for reconsideration.

8. Havens seeks reconsideration of the Division's second holding, that ship stations operating with an output power of fifty watts pursuant to Section 80.215(i) may operate with an ERP of up to thirty-six watts, to the extent that the holding is applicable to land mobile units.²² Havens argues that power limits established for the maritime service are not appropriate for land mobile radio operations.²³ We note, however, that Section 80.123(e) specifically provides that transmitter power for land mobile units associated with AMTS coast stations "shall be set in accordance with the limits set in Section 80.215 for ship stations."²⁴ This forecloses any argument that Section 80.215(i) should be construed to apply differently to land mobile units.²⁵ We accordingly deny the Havens petition.

9. *Conclusion and Ordering Clauses.* We conclude that the Division properly interpreted Section 80.385(b)(1) as specifying that a geographic AMTS licensee locating a station within 120 kilometers of a co-channel site-based AMTS station must make a showing that at least 18 dB protection will be provided to the site-based station's predicted 38 dBu signal level contour, as determined by reference to the site-based station's actual operating ERP, rather than an assumed ERP of one thousand watts. We also conclude that the Division's clarification, that AMTS ship stations operating with a transmitter power output of fifty watts under the conditions set forth in Section 80.215(i) may exceed eighteen watts ERP, applies equally to land mobile stations associated with an AMTS coast station. We therefore deny the petitions for reconsideration.

10. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration filed by Maritime Communications/Land Mobile, LLC, on May 8, 2009, and the Petition for Reconsideration and Comments Erratum Copy filed on May 8, 2009, by Warren Havens, Environmental LLC, Intelligent Transportation & Monitoring LLC, and Skybridge Spectrum Foundation, ARE DENIED.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²² See Havens Petition at 2-3.

²³ *Id.* at 3. According to Havens, more "refined" rules are required for today's land mobile radio systems, with, for example, higher power levels in rural areas than in urban areas, and a separate standard for maritime service along coastlines and major waterways. *Id.*

²⁴ See 47 C.F.R. § 80.123(e).

²⁵ As Havens and MC/LM both acknowledge, any party who believes that the rules governing TPO and/or ERP limits for land mobile units authorized under AMTS licenses should be modified can file a petition for rulemaking to that end. See Havens Petition at 3; MC/LM Opposition at 3.